

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

**AMES DEPARTMENT STORES, INC., *et al.*,
Debtors.**

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:
**Chapter 11 Case No.
01-42217 (REG)**

:
Jointly Administered

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AMES DEPARTMENT STORES, INC.,

Plaintiff,

:
:
:
**Adversary Proceeding
No. 06-01890 (REG)**

vs.

**LUMBERMENS MUTUAL CASUALTY
COMPANY D/B/A KEMPER INSURANCE
COMPANIES and AMERICAN MOTORISTS
INSURANCE COMPANY,**

Defendants.
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**SIXTH STIPULATION AND [PROPOSED]
AMENDED SCHEDULING ORDER**

This Sixth Stipulation and Order is made among Ames Department Stores, Inc. ("Ames" or "Plaintiff"), as debtor and debtor in possession and Plaintiff in the above-captioned adversary proceeding, and Lumbermens Mutual Casualty Company and American Motorists Insurance Company ("Defendants").

WHEREAS, on March 16, 2010, the Court entered a Stipulation and Order setting forth the agreed-upon discovery schedule, which included a time period for the parties to mediate their dispute;

WHEREAS, on April 20, 2010, the parties held a mediation before former Bankruptcy Judge Francis G Conrad;

WHEREAS, the parties were unable to resolve their dispute in mediation;

WHEREAS, the parties have resumed discovery in this proceeding and held a discovery conference on June 3, 2010;

WHEREAS, the parties held a second discovery conference on June 21, 2010;

WHEREAS, proceedings were delayed on consent during July and August due to the unforeseen and unavoidable unavailability of counsel for defendants;

WHEREAS, fact depositions are now scheduled to commence on September 28, 2010 in Chicago, and the parties have scheduled an in-person discovery conference in New York for October 7, 2010;

NOW, therefore, upon mutual consent, the parties hereby stipulate and agree as follows:

1. Fact discovery must be completed by no later than March 4, 2011.
2. The parties shall serve expert disclosures and expert reports, if any, by no later than March 18, 2011.
3. All depositions of expert witnesses are to be completed by no later than April 11, 2011.
4. The parties shall serve and file any request for a pre-motion conference with respect to any motion for summary judgment by no later than May 10, 2011.
5. The parties shall file a jointly prepared pretrial order no later than May 10, 2011.
6. Each person who executes this Stipulation represents that he or she is counsel for his or her representative client(s) and is executing this document on behalf of his or

her respective client(s). The Bankruptcy Court shall retain jurisdiction to resolve any disputes between the parties arising with respect to this Stipulation.

DEWEY & LeBOEUF LLP

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Attorneys for Defendants

IT IS SO ORDERED.

Dated: _____, 2011

HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

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January 26, 2011

Mark S. Gamell
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BY ECF and FEDERAL EXPRESS

Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Alexander Hamilton Custom House
One Bowling Green
New York, NY 10004-1408

Re: In Re Ames Department Stores, Inc., et al. (No. 01-42217 (REG))
Ames v. Lumbermens Mutual Casualty Company et al.
Adversary Proceeding No. 06-01890 (REG)

Dear Judge Gerber:

We are counsel for the defendants in the captioned adversary proceeding. I am writing on behalf of counsel for both the plaintiffs and defendants to advise your Honor of the current status of this matter and to respectfully request the approval of Sixth Stipulation and [Proposed] Amended Scheduling Order being filed and submitted herewith, on consent. The proposed Order seeks to extend some of the interim dates, but maintains the pretrial order deadline.

As your Honor will recall, on September 27, 2010, you approved the Fifth Stipulation And Amended Scheduling Order. The Order provides, inter alia, for the completion of all fact discovery by January 31, 2011 and expert depositions by April 11, 2011, and for the submission of a pretrial order by May 10, 2011 [ECF 43]. Since the entry of that Order, the parties have nearly completed document discovery (including party and third-party document discovery) and conducted seven depositions of parties and non-parties in five cities (San Francisco; Chicago; Philadelphia; Needham, Massachusetts; and New York). However, due to adverse weather over the last month, we have had to reschedule four depositions and were unable to complete a fifth deposition. While both sides are working in good faith to expeditiously complete discovery, additional time is clearly required.

While the parties believe that we remain on target with respect to the deadlines for expert depositions (April 11, 2011) and the pretrial order (May 10, 2011), we are unable to complete fact discovery and expert reports as currently scheduled. Accordingly, subject to your Honor's approval, the parties have agreed, as follows:

TORRE, LENTZ, GAMELL, GARY & RITTMASER, LLP


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- (1) extend the fact discovery cut off from January 31 to March 4, 2011;
- (2) extend the expert disclosures and reports date from March 3 to March 18, 2011;
- (3) maintain the expert deposition deadline as April 11, 2011; and
- (4) maintain the pretrial order deadline as May 10, 2011.

The attached Sixth Stipulation and [Proposed] Amended Scheduling Order reflects the above dates and we respectfully request that your Honor approve and "so order" this modification of the interim dates. A disk containing an "MS Word" version of the enclosed Order is enclosed.

Please let me know if the Court requires any further information in connection with this requested scheduling order amendment. Thank you for your consideration.

Respectfully,


Mark S. Gamell

MSG:ec
Enclosures

cc (by email):
Adam Kaiser, Esq.
Timothy Q. Karcher, Esq.